SINGAPORE REPORTS

J.B. JEYARETNAM v. GOH CHOK TONG

[O.C.J. (Thean J.) November 28, 1984]
[Singapore – Suit No. 4474 of 1981]

Defamation – Slander – Words published by defendant at press conference – Whether defamatory of plaintiff – Fair comment – Qualified privilege – Damages and injunction – Defamation Act (Cap. 32), s. 5.

The plaintiff, the secretary-general of the Workers' Party in Singapore, was invited as the only guest speaker on September 21, 1981 at the inauguration of the Singapore Democratic Party. After his speech he left the meeting and at that time or immediately following his departure a large section of the audience also left. The Parliamentary by-election for the constituency of Anson was to be held on October 31, 1981. The defendant, the Minister for Defence and second Minister for Health in the Singapore Government, was the first organizing secretary of the Peoples' Action Party and was therefore most concerned at securing the return of the PAP's candidate at the by-election.

On October 26, 1981 the defendant held a press conference at which representatives of the media were present. He said:

> "SDP had their inaugural *(sic)* earlier this month. Mr. Jeyaretnam attended. After Mr. Jeyaretnam had spoken, he left the hall, and when he left the hall 200 participants left with him. I believe the exodus was engineered. I don't think it was a spontaneous exodus. If it was, it did not speak well for the SDP. It shows that the crowd, the limited crowd still look towards Mr. Jeyaretnam, for the time being, as a leader of the opposition. But I am inclined to believe that the exodus was contrived by the leader of the Workers' Party to show who is boss at this stage. And surely Mr. Chiam cannot take that trick lightly."

The plaintiff complained that these words were defamatory of him and he sued the defendant claiming damages and an injunction. The plaintiff also relied on section 5 of the Defamation Act, claiming that the words were calculated to disparage him in his office as leader of a political party and in aspiring to be a Member of Parliament.

The defendant denied that the words in their natural and ordinary meaning were calculated to disparage the plaintiff in his office as the secretary-general of the Workers' Party. The defendant also raised the defences of fair comment and qualified privilege.

Held: dismissing the claim: (i) the words spoken by the defendant were capable of a defamatory meaning and were defamatory of the plaintiff. The words imputed to the plaintiff dishonourable or discreditable conduct or motive or a lack of integrity and such an imputation was defamatory of the plaintiff. However, the words though defamatory of the plaintiff were not calculated to disparage him in his office as the secretary-general of the Workers' Party. They did not impute any want of integrity or corrupt or dishonest conduct or any other misconduct in the discharge of that office. On this issue the plaintiff failed;

(ii) the defendant had succeeded in establishing the four elements necessary to find his defence of fair comment;

(iii) the plaintiff has failed to discharge his burden of proving that the defendant was actuated by malice when he uttered the words complained of. The action was accordingly dismissed with costs.

Cases referred to:–

(1) *Jones* v. *Skelton* [1963] 3 All E.R. 952, 958.
(2) *Sim* v. *Stretch* [1936] 2 All E.R. 1237, 1240.
(3) *Chalmers* v. *Payne* 150 E.R. 67, 68.
(4) *Robinson* v. *Ward* (1958) 108 L.J. 491.
(5) *Kemsley* v. *Foot* [1952] A.C. 345, 358. 360-361.
(6) *Merivale* v. *Carson* (1888) L.R. 20 Q.B.D. 275, 280, 281.
(7) *Silkin* v. *Beaverbrook Newspapers Ltd.* [1958] 2 All E.R. 516, 520.
(8) *Stuart* v. *Bell* [1891] 2 Q.B. 341.
(9) *Habditch* v. *MacIlwaine* [1894] 2 Q.B. 54.
(10) *Horrocks* v. *Lowe* [1975] A.C. 135, 150.

CIVIL SUIT.

Plaintiff in person.
J. Grimberg for the defendant.

Cur. Adv. Vult.

Thean J.: On September 21, 1981 the Singapore Democratic Party ("SDP"), a registered political party in Singapore, held its inauguration at the Singapore Conference Hall auditorium starting at 6.30 p.m. To this inauguration was invited the Plaintiff who was at that time, and still is, the secretary-general of the Workers' Party ("WP"), another registered political party in Singapore. At the time when the Plaintiff was invited he intimated to Chiam See Tong, secretary-general of the SDP, that he (the Plaintiff) had a dinner engagement on the same evening as the inauguration and would therefore have to leave after his speech, and this was acceptable to the SDP.

The Plaintiff and the chairman of the WP, Wong Hong Toy, attended the SDP's inauguration, and as a guest speaker the Plaintiff took his seat at the rostrum in the company of the leaders of the SDP, whilst his chairman sat with the audience. The Plaintiff was the first main speaker after words of welcome from the leaders of the SDP, adoption of the SDP's constitution and the swearing-in ceremony of the office bearers of the SDP. The Plaintiff was the only guest speaker and was the most popular man that evening; he received rounds of applause even before he spoke and he made a fair-

ly long speech. After his speech he left the meeting and at that time or immediately following his departure a large section of the audience also left. In fact, from that time onwards, people began to trickle out of the hall, presumably because the meeting was quite prolonged; it did not really conclude until 10.30 p.m. or thereabout.

On the following day the popularity of the Plaintiff at the SDP's inauguration was reported in the *Business Times* as follows:

"If applause were considered a good measure of popular support, Mr. J.B. Jeyaretnam, secretary-general of the Workers' Party, was definitely the most popular person at the Conference Hall last night.

Ironically, the occasion was the inauguration of the Singapore Democratic Party. Mr Jeyaratnam, the guest speaker received four rounds of loud hand claps – before he uttered his first words – as he was introduced.

Several of the some 300-strong audience even walked out after his speech ..."

On October 14, 1981 a writ was issued for a Parliamentary by-election for the constituency of Anson, and the nomination day for candidates for the by-election was fixed for October 21, 1981 and the by-election was to be held on October 31, 1981. On October 20, 1981, on the eve of the nomination day, the following report appeared in the then afternoon newspaper, *New Nation* under the heading, "Chiam, Jeya keep mum":

"Today is the eve of Nomination Day for the Anson by-election but the Workers' Party and the Singapore Democratic Party are still keeping mum.

Mr. J.B. Jeyaretnam, secretary-general of the Workers' Party, said party members will meet today but declined to elaborate.

Mr. Chiam See Tong, secretary-general of SDP, said last week that his party chairman, Mr. Fok Tai Loy, is a likely candidate for the by-elections. But this morning, he would not confirm this. However, he maintained that the party will be contesting.

The United People's Front secretary-general, Mr Harbans Singh, has said that he will be contesting.

The PAP has named Mr Pang Kim Hin as its candidate for the by-election on October 31."

On the nomination day, the People's Action Party ("PAP") nominated Pang Kim Hin, as their candidate and the WP nominated the Plaintiff as their candidate for the by-election. The SDP on seeing that the Plaintiff was nominated did not field a candidate to contest the by-election.

The Defendant is the Minister for Defence and Second Minister for Health in the Government. He was appointed the first organising secretary of the PAP on April 17, 1979 and has continued to hold that post. As such he was responsible for, *inter alia*, the party's election activities. He was therefore most concerned at securing the return of the PAP's candidate at the by-election. On October 26, 1981 he held a press conference at Blair Plain at which representatives of the media, such as the press and Singapore Broadcasting Corporation, were present. At that conference the Defendant spoke, among other things, the following words:

"SDP had their inaugural *(sic)* earlier this month. Mr. Jeyaretnam attended. After Mr. Jeyaretnam had spoken, he left the hall, and when he left the hall 200 participants left with him. I believe the exodus was engineered. I don't think it was a spontaneous exodus. If it was, it did not speak well for the SDP. It shows that the crowd, the limited crowd still look towards Mr Jeyaretnam, for the time being, as a leader of the opposition. But I am inclined to believe that the exodus was contrived by the leader of the Workers Party to show who is boss at this stage. And surely Mr. Chiam cannot take that trick lightly."

These are the words complained of by the Plaintiff as defamatory of him and the present proceedings were initiated by the Plaintiff against the Defendant claiming damages and injunction. The Plaintiff claims that the words complained of in their natural and ordinary meaning were defamatory of him: they meant and were understood to mean that the "Plaintiff was an opportunist, a man of base and dishonourable motives, seeking only to promote himself, to gain power for himself, and had shown by his conduct that he was not genuinely sincere in building up a credible and constructive opposition in Parliament but out solely to seek his own glory and was accordingly unfit to hold the office of a Member of Parliament." He further claims that the words were calculated to injure him in his office as leader of a political party and in aspiring to be a Member of Parliament. By this further plea the Plaintiff is in effect invoking section 5 of the Defamation Act (Cap. 32), to which I shall revert later. The Defendant denies that the said words in their natural and ordinary meaning were defamatory of the Plaintiff as alleged or at all and that they were calculated to disparage the Plaintiff in his office as the secretary-general of the W.P. The Defendant further raises two other defences, namely: first, the said words were fair comment spoken without malice upon a matter of public interest, namely, the conduct of leaders of the opposition parties, including the Plaintiff, and the conduct of members of the public prior to the Parliamentary by-election, and secondly, the occa-

sion in which the said words were uttered was one of qualified privilege. The Plaintiff joins issue with the Defendant on the latter's defences and alleges that the Defendant was actuated by malice when he said those words. There are therefore 5 issues before me:

(i) Whether the words in their natural and ordinary meaning were defamatory of the Plaintiff;
(ii) If they were, whether they were calculated to disparage him in his office as the secretary-general of the WP and hence are actionable without proof of special damage under section 5 of the Defamation Act (Cap. 32);
(iii) Whether the words complained of were fair comment on a matter of public interest;
(iv) Whether the occasion in which the words were spoken was one of qualified privilege, and
(v) Whether the Defendant was actuated by any malice in uttering the words complained of.

The first issue is one purely of construction of the words complained of, and the approach to such a construction is to consider the meaning such words would convey to ordinary reasonable persons using their general knowledge and common sense; it is not confined to strict literal meaning of the words but extend to any reference or implication from which persons can reasonably draw. As said by Lord Morris in *Jones* v. *Skelton* [1] at p. 958:

"The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (see *Lewis* v. *Daily Telegraph, Ltd.* [1963] 2 All E.R. 151). The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense."

Together with the ascertainment of the natural and ordinary meaning of the words complained of to be considered is the question whether they were defamatory of the Plaintiff. The test here is whether the words were calculated to expose him to hatred, ridicule or contempt in the mind of a reasonable man or would "tend to lower the plaintiff in the estimation of right-thinking members of society generally" (*per* Lord Atkin in *Sim* v. *Stretch*).[2]

The crucial point in this issue is this: did the words complained of in their natural and ordinary meaning impute to the Plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If they did, then inescapably they were defamatory of the Plaintiff. It seems to me that in considering this issue one must bear in mind the following salient facts. First, the event to which the words made reference was the inauguration of the SDP – undoubtedly a great and important event to the SDP. Secondly, at the inauguration the Plaintiff in his position as the secretary-general of the WP was accorded an unusually high honour in being invited to speak. He was the only guest speaker and the first main speaker taking precedence over the speeches of all the leaders of the SDP. From the reports and according to representatives of the press media, who were present at the meeting, the Plaintiff was the most popular man that evening receiving rounds and rounds of applause even before he spoke and during his speech. Lastly, though much has been sought to be made out by the Defendant and his Counsel that the WP and SDP were rival political parties, which was not borne out by evidence, at the material time at any rate the relations between the two political parties were friendly. In those circumstances the words, in my opinion, were capable of a defamatory meaning and were defamatory of the Plaintiff. The sting lay in the suggestion or implication that the Plaintiff took advantage of a gesture of goodwill from the SDP – a party with which the WP had good relations – on the occasion of the SDP's inauguration for a purely selfish and self-serving purpose and engineered or contrived an exodus of a large section of the audience at the inauguration so as to project himself as the "boss" and leader of the opposition parties to the party in power. The words imputed to the Plaintiff dishonourable or discreditable conduct or motive or a lack of integrity and such an imputation in my opinion was defamatory of the Plaintiff.

Mr. Grimberg on behalf of the Defendant argued, first, that the words complained of must be looked at in the whole context in which they were spoken: "the bane and antidote must be taken together" (*per* Alderson B. in *Chalmers* v. *Payne*).[3] Secondly, these words were spoken of the Plaintiff as a politician at a campaign for a Parliamentary by-election and were part of an attempt by the De-

fendant to analyse the manoeuvring of the two political parties in opposition, namely, the WP and the SDP. Viewed in that context and in those circumstances the words, he said, could not be defamatory. I agree that the words must be considered in the context of the whole speech made by the Defendant and in those circumstances. But I do not agree that considered in the context and in those circumstances they were not defamatory of the Plaintiff. Indeed, there is nothing in the contextual material of the Defendant's speech or the circumstances in which the words were spoken which could eliminate or ameliorate the asperities of the sting. Mr. Grimberg next argued that the tolerance level of right-thinking persons at election time rose and a remark which might be defamatory passed "as a common coin at election time," and further that the words were spoken to representatives of the press media and their esteem of a politician would not be likely to be reduced "by a purely political dig" at election time. In my view, neither of these arguments is sufficiently cogent. First, the meaning of the words in which they were understood by the listeners is irrelevant for the purpose of deciding the natural and ordinary meaning of the words. Secondly, the words which by their natural and ordinary meaning are defamatory of a person remain as such even if they do not really lower him in the estimation of those to whom the words were uttered.

Mr. Grimberg in the course of his lengthy submission on this point postulated an example of similar words spoken of an academic, who addressed a large symposium and left immediately thereafter followed by an exodus of a substantial part of the audience, and conceded that in such circumstances such words might be defamatory of the speaker. I have no doubt at all that in such circumstances the words if said of such a speaker would be defamatory of him. In this case I have no doubt also that the words complained of were defamatory of the Plaintiff, notwithstanding that they were said of the Plaintiff as a politician and in the circumstances as suggested by Mr. Grimberg.

I now turn to the next issue whether the words though defamatory of the Plaintiff are actionable. This is an action for slander and the Plaintiff has not averred or proved any special damage suffered by him. He can only succeed if he can show that the defamatory words fall within section 5 of the Defamation Act (Cap. 32), which provides as follows:

> "5. In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of publication, it shall not be necessary to allege or prove special damage whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business."

The only office which is relevant to this issue is the office of secretary-general of the WP which the Plaintiff held at the time the defamatory words were spoken and which he still holds. The office is one of honour and not an office of profit; a fact admitted without reserve by the Plaintiff. The question therefore is whether the words complained of were calculated to disparage the Plaintiff in that office and the answer turns on what in law is meant by the words "calculated to disparage" a person in his office, and such words as laid down by decided cases have certain signification in relation to an office of honour, as distinguished from an office of profit.

Section 5 of our Defamation Act is *in pari materia* with section 2 of the Defamation Act, 1952 of England. At common law prior to the passing of the Act of 1952 in order to maintain an action for slander by words spoken of a person concerning his office, where such office was one of honour and not of profit and where no special damage was proved, two requirements must be fulfilled:

(i) the words must impute to that person want of integrity or corrupt or dishonest conduct or other misconduct in the discharge of his office, and

(ii) they must be said in the way of that office.

Since the passing of the Act it is no longer necessary to satisfy the second requirement but the first requirement remains. In other words, in order to be actionable *per se* without proof of special damage, the slanderous words which are said to be calculated to disparage a person in his office, where such office is one of honour, must impute some want of integrity or corrupt or dishonest conduct or other misconduct in the discharge of that office. In the case of *Robinson* v. *Ward* [4] in an action for slander, where the plaintiff had alleged that the defendant used words which meant and were understood to mean that the plaintiff was not a fit and proper person to be a perceptor of a masonic lodge, Diplock J. (as he then was) held that in an action for slander for words alleged to have been spoken of a

plaintiff touching his office, where such office was one of honour and not of profit and no special damage was proved, it was necessary in order to show that the words were calculated to disparage the plaintiff in his office within section 2 of the Defamation Act, 1952 to establish, in accordance with decisions prior to that Act, that the words imputed to the plaintiff some want of integrity or corrupt or dishonest conduct in the discharge of his office. That decision has stood the test of time for more than 25 years and has been quoted with acceptance by learned text book writers to be correct: see Vol 28, *Halsbury's* Laws of England (4th edn.) para. 55 and *Gatley* on Libel and Slander (8th edn.) para. 174. I respectfully agree with the view of the law as laid down in *Robinson* v. *Ward (supra).* In my judgment the words though defamatory of the Plaintiff were not calculated to disparage him in his office as the secretary-general of the WP. They did not impute any want of integrity or corrupt or dishonest conduct or any other misconduct in the discharge of that office. On this issue the Plaintiff fails.

My decision on the second issue is sufficient to dispose of this action. However, in view of the matters pleaded and the arguments addressed by both the Plaintiff and Mr. Grimberg, I feel I should decide also the remaining three issues.

On the third issue, there are 4 elements which the Defendant must establish in order to succeed on his plea of fair comment:

(i) the words complained of are comment, though it may consist of or include inference of facts;
(ii) the comment is on a matter of public interest;
(iii) the comment is based on facts, and
(iv) the comment is one which a fair-minded person can honestly make on the facts proved.

On the first element it is useful to set out in greater detail the relevant passage of the Defendant's speech from which the words complained of were extracted. He said:

"I believe, reading the press reports, that SDP told the press that he was going in to contest the Anson by-election, but as it turned out, he never did. A party that purports to be serious-minded must not mislead members of the press and the public. It is not a tactical measure to fool the PAP. The PAP has announced its candidate. Then who is the SDP trying to pull the wool over the eyes? Not the PAP. I think there is a game going on between the SDP and the Workers Party – who is the leader of the opposition or who will be the leader of the opposition parties in the years to come. SDP had their inaugural earlier this month. Mr. Jeyaretnam attended. After Mr. Jeyaretnam had spoken, he left the hall, and when he left the hall 200 participants left with him. I believe the exodus was engineered. I don't think it was a spontaneous exodus. If it was, it did not speak well for the SDP. It shows that the crowd, the limited crowd still look towards Mr. Jeyaretnam, for the time being, as a leader of the opposition. But I am inclined to believe that the exodus was contrived by the leader of the Workers Party to show who is boss at this stage. And surely Mr. Chiam cannot take that trick lightly."

Looking at the passage as a whole it seems to me clear that the Defendant at that time first addressed himself to certain facts, which he gathered from the press or of which he was informed by DW 2, namely:

(a) the vacillating attitude of the SDP as regards contesting the by-election;

(b) the inauguration of the SDP at which the Plaintiff spoke as a guest speaker;

(c) the departure of the Plaintiff immediately after his speech, and

(d) the exodus of a large section of the audience, about 200 persons, at about the same time of the Plaintiff's departure or immediately thereafter.

The Defendant then drew his own inference from these facts that the exodus was engineered or contrived by the Plaintiff to show who was the "boss" at that stage. It is this inference which is the thrust of the complaint of the Plaintiff. To my mind this was a comment and not a bare or naked statement of facts. It contained the Defendant's belief or his conclusion based on or drawn from certain facts.

On the second element, I do not think that there can be any doubt that the subject matter of the comment was one of public interest. The comment was made on an event that took place at the inauguration of the SDP and the conduct or behaviour of a candidate for a Parliamentary by-election. Such matters are clearly of public interest, and I do not think that this point merits any further discussion.

The third and the fourth elements should be considered together. At this stage I would like to dispose of a point raised by the Plaintiff. In his written submission the Plaintiff drew my attention to the discrepancy between what the Defendant

said at the press conference and what he pleaded in his defence. At the press conference the Defendant, antecedent to his uttering the defamatory words, mentioned or made reference to only the following facts:

(a) that the SDP had an inauguration;

(b) that the Plaintiff attended and spoke;

(c) that after the Plaintiff had spoken, he left, and

(d) that some 200 participants left with him.

In his defence, however, the Defendant set out a number of other facts in support of his plea of fair comment. It is not clear to me precisely what the Plaintiff sought to make out by picking on this discrepancy. The Plaintiff then dealt with only those facts mentioned by the Defendant at the press conference and sought to demonstrate that the facts were not correctly stated by the Defendant and therefore maintained that the defence of fair comment was not available. The Plaintiff, however, ignored all other facts pleaded by the Defendant as the basis on which the plea of fair comment is founded. On this line of argument I have two observations. First, to sustain a defence of fair comment it is not necessary that all the facts, which form the basis of the comment, should be referred to in the defamatory words; what is required is a sufficient substratum of facts referred to or implied from the defamatory words. Lord Oaksey in *Kemsley* v. *Foot* [5] put the matter as follows:

"The forms in which a comment on a matter of public importance may be framed are almost infinitely various and, in my opinion, it is unnecessary that all the facts on which the comment is based should be stated in the libel in order to admit the defence of fair comment. It is not, in my opinion, a matter of importance that the reader should be able to see exactly the grounds of the comment. It is sufficient if the subject which *ex hypothesi* is of public importance is sufficiently and not incorrectly or untruthfully stated."

Secondly, for a defence of fair comment to succeed it is not necessary to prove each of the facts pleaded in support; all that is needed is to prove such of the facts as are sufficient to form the basis of a fair comment. Lord Porter in *Kemsley* v. *Foot (supra)* said, at p. 358:

"In the present case, for instance, the substratum of fact upon which comment is based is that Lord Kemsley is the active proprietor of and responsible for the Kemsley Press. The criticism is that that press is a low one. As I hold, any facts sufficient to justify that statement would entitle the defendants to succeed in a plea of fair comment. Twenty facts might be given in the particulars and only one justified, yet if that one fact were sufficient to support the comment so as to make it fair, a failure to prove the other nineteen would not of necessity defeat the defendants' plea. The protection of the plaintiff in such a case would, in my opinion, be, as it often is in cases of the like kind, the effect which an allegation of a number of facts which cannot be substantiated would have upon the minds of a jury who would be unlikely to believe that the comment was made upon the one fact or was honestly founded upon it and accordingly would find it unfair."

I now turn to examine what facts have been proved by the Defendant in support of his plea of fair comment. On the evidence the Defendant has proved the following facts:

(a) The inauguration of the SDP was held on September 21, 1981 at the Singapore Conference Hall auditorium.

(b) The Plaintiff was invited as the secretary-general of the WP to speak at the inauguration and he was the only guest speaker and was the first speaker after the leaders of the SDP had delivered words of welcome and the office bearers had been sworn in.

(c) There were about 300 participants at the inauguration.

(d) The Plaintiff was the most popular man that evening at the auditorium, receiving rounds of applause even before he spoke, and this was reported in the issue of the *Business Times* on September 22, 1980.

(e) He spoke at great length and was also applauded while he was speaking, and immediately after his speech he picked up his papers and left the hall: see evidence of DW 3.

(f) His departure was unexplained.

(g) At that time or immediately thereafter there was a large section of the audience – some 200 people – who also left the meeting. At the end of the meeting there were about 100 people remaining in the hall.

(h) On October 14, 1981 a writ was issued for the Anson by-election.

(i) As from that day to the nomination day there was no indication to the public of any electoral alliance between the WP and SDP.

(j) On October 20, 1981 a report appeared in the then *New Nation* that both Chiam See Tong and the Plaintiff were keeping "mum" and that one week before Chiam had said that his party chairman, Fok Tai Loy, would be a likely candidate but Chiam refused to confirm.

(k) On October 22, 1981 it was reported in *The Straits Times* that when Chiam See Tong arrived at the nomination centre on the polling day, he said: "Yes, we are going in"; that subsequently Chiam See Tong, Fok Tai Loy and the Plaintiff "were seen huddled together inside the hall", and that the chairman of the SDP was reported to have said that the "two parties did not really come to terms over the candidacy for Anson until they met inside the hall."

(l) It was also reported in the said issue of *The Straits Times* that after the close of nomination Chiam read a statement stating, among other things, that the SDP on learning that the Plaintiff was contesting the by-election had graciously withdrawn their candidate, thus implying that if another person had been nominated by the WP, the SDP would field their candidate for the by-election.

The next question is whether on all these facts a fair-minded person could honestly have come to the conclusion as the Defendant did: that the exodus of 200 participants at the SDP's inauguration was engineered or contrived by the Plaintiff to show that he was the "boss" at that stage, and there was no unity between the WP and the SDP. The test is an objective one. In *Merivale* v. *Carson* [6] Lord Esher, M.R. said, at pp. 280-281:

> "What is the meaning of a "fair comment"? I think the meaning is this: is the article in the opinion of the jury beyond that which any fair man, however prejudiced or however strong his opinion may be, would say of the work in question? Every latitude must be given to opinion and to prejudice, and then an ordinary set of men with ordinary judgment must say whether any fair man would have made such a comment on the work. It is very easy to say what would be clearly beyond that limit; if, for instance, the writer attacked the private character of the author. But it is much more difficult to say what is within the limit. That must depend upon the circumstances of the particular case. I think the right question was really left by Field, J., to the jury in the present case. No doubt you can find in the course of his summing-up some phrases which, if taken alone, may seem to limit too much the question put to the jury. But, when you look at the summing-up as a whole, I think it comes in substance to the final question which was put by the judge to the jury: "If it is no more than fair, honest, independent, bold, even exaggerated, criticism, then your verdict will be for the defendants." He gives a very wide limit, and, I think, rightly. Mere exaggeration, or even gross exaggeration, would not make the comment unfair. However wrong the opinion expressed may be in point of truth, or however prejudiced the writer, it may still be within the prescribed limit. The question which the jury must consider is this – would any fair man, however prejudiced he may be, however exaggerated or obstinate his views, have said that which this criticism has said of the work which is criticised? If it goes beyond that, then you must find for the plaintiff; If you are not satisfied that it does, then it falls within the allowed limit, and there is no libel at all."

To the same effect were words said by Diplock, J. (as he then was) in his direction to the jury in *Silkin* v. *Beaverbrook, Newspapers Ltd.* [7]:

> "The matter which you have got to decide, and I emphasise this again, because it is so important, is not whether you, any of you, agree with that comment. You may all of you disagree with it, feel that it is comment that is not correct; but that is not the test. I will remind you of the test once more. Could a fair-minded man, holding a strong view, holding perhaps an obstinate view, holding perhaps a prejudiced view – could a fair-minded man have been capable of writing this? That is a totally different question from the question: Do you agree with what he said?
>
> So in considering this case, members of the jury, do not apply the test of whether you agree with it. If juries did that, freedom of speech, the right of the crank to say what he likes, would go. Would a fair-minded man holding strong view, obstinate views, prejudiced views, have been capable of making this comment? If the answer to that is yes, then your verdict in this case should be a verdict for the defendants. Such a verdict does not mean that you agree with the comment. All it means is that you think that a man might honestly hold those views on those facts. But it is for you, the jury, not for me, the judge, to answer that question, and the answers which juries have given in cases of this kind to that question have formed the law which lies at the basis of freedom of speech in this country."

Applying the objective test as laid down in the pronouncements I have just quoted at great length and on the basis of those facts as proved before me, in my judgment a fair-minded person could at that time have honestly arrived at the conclusion as the Defendant did. It is significant that the Defendant in arriving at this conclusion did consider the alternative conclusion, *i.e.* that the exodus from the SDP's inauguration was spontaneous but in such a case it did not reflect too well on the SDP, and he ruled out this alternative. Now the conclusion which the Defendant arrived at may not be impartial; obviously it cannot be so. That conclusion may be biased, may be prejudiced, may be grossly exaggerated or may even be wrong; it may be a conclusion I cannot and do not agree. But it is one which falls within the allowed limit of fair comment: it is a conclusion which a fair-minded person on the basis of those facts could have

honestly arrived at. In my judgment the Defendant has succeeded in establishing the four elements necessary to found his defence of fair comment.

I now turn to the fourth issue: whether the words complained of were uttered on an occasion of qualified privilege. Mr. Grimberg referred to the categories of qualified privilege as set out in para. 14.01 of *Duncan & Neil* (2nd edn.) on p. 92 and feebly argued that the Defendant's statement fell within category (a) thereof, i.e. statement made in pursuance of a legal, social or moral duty to a person who has a corresponding duty or interest to receive them, and cited *Stuart* v. *Bell* [8] in support. He sought to found the defence of qualified privilege on the fact that at the material time there was a by-election and that the Defendant as a politician had a social duty to inform representatives of the media his assessment of the political opponents and that such representatives had a corresponding duty or interest to receive it. Such an argument I am unable to accept; it is really stretching the limits of the occasion of qualified privilege and extravagantly attributing to the Defendant a social duty to make the statement complained of and to the representatives of the media a corresponding duty or interest to receive it. Assuming that the Defendant, being at the material time "the principal PAP strategist for the Anson by-election" (as Mr. Grimberg very attractively put it), had a social duty to make that statement to the representatives of the media, it is difficult to see how the latter had a corresponding duty or interest to receive it. Clearly they do not have: see *Hebditch* v. *MacIlwaine* [9]. In that case the plaintiff was elected to the office of the guardian of the poor for a certain parish. The defendants who were ratepayers and entitled to vote at the election sent to the board of guardians a letter containing defamatory words of the plaintiff. Lord Esher, M.R. said, at p. 59:

"Such being the facts of the case, what was the judge called upon to consider in dealing with the question whether the occasion was privileged? He had first to consider whether the defendants, who published the defamatory matter, had any interest or duty in connection with the subject which they thus brought before the board of guardians. I am not prepared to say that they had not an interest or duty. On the contrary, I am inclined to think that they had an interest in the matter. They were electors, and had an interest in having the office filled by a person properly elected. Then the position of the board of guardians, to whom the defamatory matter was published, had to be considered. They had no interest in the matter, as it seems to me, and, as I have already said, they had no duty or power to take any action upon the communication made to them. Under these circumstances I think it clear that the occasion was not privileged."

I therefore reject the defence of qualified privilege raised by the Defendant.

I now turn to the last issue: whether in uttering the words complained of the Defendant was at that time actuated by malice. Malice means any ill-will, spite or improper motive. The burden of proving malice rests with the Plaintiff. The Plaintiff here is relying on the following:

(a) The words were uttered by the Defendant more than a month after the event which took place.

(b) The Defendant was directing or actively assisting in the campaign to secure the election of the PAP's candidate in a by-election and was keenly interested in the result of the election.

(c) The words uttered were a deliberate attack on the personal character and integrity of the Plaintiff.

(d) The Defendant published the words knowing them to be untrue and/or recklessly not caring whether they are true or false or without any honest belief.

It will be convenient to deal with the allegations in sub-paragraphs (a) and (b) together. It is true that the Defendant uttered the words complained of about one month after the event. But that by itself is not evidence of malice; nor does it give rise to any inference of malice on the part of the Defendant. There was a by-election and as organising secretary the Defendant was very much concerned at securing the election of the PAP's candidate. As part of PAP's campaign he called for a press conference at which he sought to analyse and assess his political opponents and show that there was no real unity between the WP and the SDP. Hence he referred to the unusual event at the SDP's inauguration, the vacillating attitude of the SDP, the agreement reached between the SDP and WP at the eleventh hour just before close of the nomination at the nomination centre and proceeded to draw his inferences. It is true that the Defendant wanted the PAP's candidate to win the by-election and, of course, he was keenly interested in the results of the by-election. True also it is, that all the words and statements made at the press conference were directed towards demolishing the Plaintiff as a political candidate and diminishing his chances of success at the by-election. There is nothing improper about that (apart from uttering the defamatory words on which I have decided) and

such an exercise does not give rise to any inference of malice on the part of the Defendant. As for the allegation in sub-paragraph (c) relied upon by the Plaintiff, there is no evidence, nor can it be inferred, that the Defendant was making a personal attack on the Plaintiff. On the contrary, he took pains to clarify this at the conference when he said:

"I want to make clear that any statements of mine this afternoon about the opposition parties and about their leaders are not about them as individuals but about them as politicians. In other words, I do not cast any aspersions on them as individuals. I only challenge their credentials as politicians, as people who aspire to be MPs."

With regard to the last allegation in sub-paragraph (d) that the Defendant uttered the words knowing them to be untrue or recklessly not caring whether they are true or false, I find there is no basis for such an allegation. As I said before, there were facts on which the Defendant could honestly make his comment.

The Defendant was subject to a prolonged cross-examination in which he gave his evidence with candour. Nothing has emerged therefrom or elicited from him which cast any doubt or suspicion on the *bona fides* of his belief that the conclusion he came to was true. I find no ground for disbelieving him that the belief he entertained was a genuine and honest one. In considering this issue I find most pertinent the following passage from the judgment of Lord Diplock in *Horrocks* v. *Lowe*, [10] notwithstanding that the words complained of were uttered by the Defendant in the course of an analysis of his political opponents:

"Apart from those exceptional cases, what is required on the part of the defamer to entitle him to the protection of the privilege is positive belief in the truth of what he published or, as it is generally though tautologously termed, "honest belief." If he publishes untrue defamatory matter recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false. But indifference to the truth of what he publishes is not to be equated with carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true. The freedom of speech protected by the law of qualified privilege may be availed of by all sorts and conditions of men. In affording to them immunity from suit if they have acted in good faith in compliance with a legal or moral duty or in protection of a legitimate interest the law must take them as it finds them. In ordinary life it is rare indeed for people to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value. In greater or in less degree according to their temperaments, their training, their intelligence, they are swayed by prejudice, rely on intuition instead of reasoning, leap to conclusions on inadequate evidence and fail to recognise the cogency of material which might cast doubt on the validity of the conclusions they reach. But despite the imperfection of the mental process by which the belief is arrived at it may still be "honest," that is, a positive belief that the conclusions they have reached are true. The law demands no more."

Lord Diplock in that case was dealing with the question of malice affecting the defence of qualified privilege but what was said there equally applies to malice affecting the defence of fair comment. In conclusion, I find that the Plaintiff has failed to discharge his burden of proving that the Defendant was actuated by malice when he uttered the words complained of.

Accordingly, this action is dismissed with costs.

Action dismissed.

Solicitors: *Drew & Napier.*

THE "KUSU ISLAND" M.V. "BRANI ISLAND", OWNERS OF CARGO LADEN ON BOARD v. M.V. "KUSU ISLAND", OWNERS OF

[A.C.J. (Lai Kew Chai J.) December 2, 1983]
[Singapore – Admiralty in Rem No. 698 of 1980]

Shipping Law – Admiralty action in rem – Correction of name of defendant – Renewal of admiralty writ in rem – Circumstances for consideration – Whether action in rem was action against res – R.S.C. 1970, O. 6 r.7(2), O.20 rr.1 (1), 4(1), 5(3), & O. 32 r. 6.

This appeal involved the circumstances under which the name of a defendant in an admiralty *in rem* action may be corrected under O. 20 r. 5(3) of the Rules of the Supreme Court 1970 and of the circumstances under which an admiralty writ *in rem* may be renewed under O. 6 r. 7(2). The appellants were the receivers and owners of certain bales of cotton sheets shipped under 2 bills of lading in the respondents' vessel known as "Brani Island". The appellants found some damage to the goods giving rise to a claim of about $110,000. When negotiations for an amicable settlement failed the appellants commenced an admiralty *in rem* action for damages against the owners of the ship or vessel "Brani Island". The writ was issued 10 days before the expiry of the one year limitation period which fell on October 26, 1980. On April 21, 1981, the appellants under O. 20 r. 1(1) amended the writ by deleting the name of the respondents and substituting therefore the words: "The Owners of the ships or vessels *Brani Island, Senang Island, Kusu Island.*" Leave was granted by the Assistant Registrar to renew the writ for a period of 12 months from October 16, 1981. On October 24, 1981, the writ after the usual deletions of the names of *Brani*